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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

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Arizona Corporation Commission

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IN THE MATTER OF THE APPLICATION OF  
PIMA UTILITY COMPANY, AN ARIZONA  
CORPORATION, FOR A DETERMINATION OF  
THE FAIR VALUE OF ITS UTILITY PLANT AND  
PROPERTY AND FOR INCREASES IN ITS  
WATER RATES AND CHARGES FOR UTILITY  
SERVICE BASED THEREON.

DOCKET NO. W-02199A-11-0329

IN THE MATTER OF THE APPLICATION OF  
PIMA UTILITY COMPANY, AN ARIZONA  
CORPORATION, FOR A DETERMINATION OF  
THE FAIR VALUE OF ITS UTILITY PLANT AND  
PROPERTY AND FOR INCREASES IN ITS  
WASTEWATER RATES AND CHARGES FOR  
UTILITY SERVICE BASED THEREON.

DOCKET NO. SW-02199A-11-0330

**PROCEDURAL ORDER**  
**(Setting Procedural Conference)**

**BY THE COMMISSION:**

On August 29, 2011, Pima Utility Company ("Pima" or "Company") filed with the Arizona Corporation Commission ("Commission") applications for rate increases in both its water and wastewater divisions.

The parties to these consolidated dockets are Pima, the Residential Utility Consumer Office ("RUCO"), and the Commission's Utilities Division ("Staff").

On November 21, 2013, the Commission issued Decision No. 73573. Decision No. 73573 approves new rates for Pima, and orders that in the event the Commission alters its policy to allow S-corporation and LLC entities to impute a hypothetical income tax expense for ratemaking purposes, Pima may file a motion to amend Decision No. 73573 prospectively to increase the Company's authorized revenue requirement to reflect the change in Commission policy.

On February 21, 2013, the Commission issued Decision No. 73739 in Docket No. W-00000C-06-0149. Decision No. 73739 adopted a policy which allows imputed income tax expense in the cost of service for limited liability companies, S-corporations, partnerships, and sole

1 proprietorships. The policy states that it will be applied in pending and future rate cases, and allows  
2 companies previously denied recognition of income tax expense to make a filing under A.R.S. § 40-  
3 252 to modify the revenue requirement authorized in their most recent rate case in order to include  
4 income tax expense prospectively. The policy also includes a 7-step protocol for determining the  
5 income tax expense.

6 On March 29, 2013, the Company filed a petition to amend Decision No. 73573 pursuant to  
7 A.R.S. § 40-252, requesting that the Commission amend Decision 73573 to increase the Company's  
8 water division and wastewater division test year revenue requirements and rates to reflect the  
9 inclusion of income tax expense based upon the policy set forth in Decision No. 73739 ("Petition").  
10 The Petition included certain rate schedules, and requested approval without a hearing, following  
11 review and verification of the included information and schedules by Staff.

12 On April 2, 2013, RUCO filed a Response to the Petition, objecting to the Company's  
13 recovery of income tax expense and to the methodology proposed for calculating the expense  
14 amount.

15 On April 8, 2013, Pima filed a Reply to RUCO's Response to the Petition, asserting that  
16 RUCO's challenge to the new Commission policy on income tax recovery for pass-through entities  
17 should be rejected.

18 On May 1, 2013, Staff filed a Staff Report and Proposed Order recommending approval of the  
19 requested rate increase and associated rate design. Staff also recommended that the Company  
20 provide notice of the Petition via a special direct mailing to all of its customers and to all parties to  
21 the case, and that the Company be ordered to file a full rate case application for both its water and  
22 wastewater divisions by no later than June 30, 2015, using a calendar year 2014 test year.

23 On May 23, 2013, the Company filed an Affidavit of Mailing Public Notice indicating that it  
24 mailed a copy of notice of the Petition on May 21, 2013, in a special direct mailing to all of the  
25 Company's customers and to all parties on the service list for this docket, indicating the rate effects  
26 that approval of the Petition would have on customers' rates.

27 Numerous public comments were filed opposing the Petition.

28 On May 30, 2013, Pima filed a Response to Staff Report and Recommended Order, objecting

1 to Staff's recommendation that the Company file a rate case using a calendar year 2014 test year, and  
2 stating that its requested income tax expense recovery should be treated as an imputed cost of service  
3 expense rather than as an allowance that increases the fair value rate of return.

4 On July 16, 2013, the Commission issued Decision No. 73993. Decision No. 73993 increases  
5 the Company's rates to reflect recovery of income tax expense as requested by the Company,  
6 classifies the income taxes as an imputed expense, and requires the filing of a rate case by no later  
7 than June 30, 2017, using a calendar year 2016 test year.

8 On July 31, 2013, RUCO filed an application for rehearing of Decision No. 73993 pursuant to  
9 A.R.S. § 40-253. RUCO disagrees with Decision No. 73993 as a matter of public policy, and claims  
10 that Decision No. 73993 violates Arizona's Constitution by increasing rates based on a new expense  
11 without a meaningful fair value analysis, citing to *Scates v. Ariz. Corp. Comm'n*, 118 Ariz. 531, 578  
12 P.2d 612 (Ariz. App. 1978). RUCO also claims that the manner in which Decision No. 73993  
13 imputes the income tax expense is arbitrary, capricious, and an abuse of discretion, because the  
14 expense amount is not based on the Company shareholders' actual income taxes.

15 At the Commission's August 15, 2013, Staff Open Meeting, the Commission voted to grant  
16 RUCO's request to rehear Decision No. 73993 pursuant to A.R.S. § 40-253; directed the Hearing  
17 Division to hold proceedings on rehearing and prepare a Recommended Opinion and Order for  
18 Commission consideration; and directed that the rehearing issue first be brought back to a future  
19 Open Meeting, in order to provide further direction to the Hearing Division.

20 At the Commission's September 11, 2013, Staff Open Meeting, the Commission approved a  
21 motion to reopen Decision No. 73573 pursuant to A.R.S. § 40-252, for purposes of considering  
22 whether to modify the Decision's determinations that may be implicated by RUCO's application for  
23 rehearing of Decision No. 73993, in order to ensure that RUCO has an opportunity to address the  
24 matters raised in the rehearing application. The motion directed the Hearing Division to conduct  
25 proceedings and hold evidentiary hearings in order to take evidence in accordance with the *Scates*  
26 opinion and Arizona law.<sup>1</sup>

27 <sup>1</sup> Commissioner Bob Burns, who made the motion, explained that the purpose of his motion was to ensure that RUCO has  
28 the opportunity to address the matters raised in its application for rehearing, and that it is not foreclosed from pursuing  
any matters raised in its rehearing application because of the Commission's prior determinations.

A procedural conference should be held in order to discuss the procedural schedule for the presentation of evidence in the rehearing proceeding in accordance with the *Scates* opinion and Arizona law.

IT IS THEREFORE ORDERED that that a procedural conference shall be held on **October 4, 2013, commencing at 3:00 p.m., or as soon thereafter as practicable**, at the Commission's offices, **Hearing Room No. 2**, 1200 West Washington Street, Phoenix, Arizona 85007, to discuss procedural issues related to the rehearing of Decision No. 73993, including a schedule for the presentation of evidence in accordance with the *Scates* opinion and Arizona law.

IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend, or waive any portion of this procedural order either by subsequent procedural order or by ruling at hearing.

DATED this 20<sup>th</sup> day of September, 2013.

  
TEENA JIBILIAN  
ADMINISTRATIVE LAW JUDGE

Copies of the foregoing mailed/delivered this 20<sup>th</sup> day of September, 2013 to:

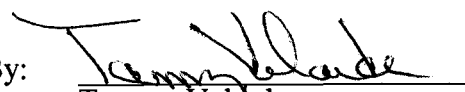
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